

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PHOENIX LIGHT SF LIMITED, in its own right and in	:
the right of BLUE HERON FUNDING VI LTD., BLUE	:
HERON FUNDING VII LTD., KLEROS PREFERRED	:
FUNDING V PLC, SILVER ELMS CDO PLC,	:
SILVER ELMS CDO II LIMITED, C-BASS CBO XIV	:
LTD., and C-BASS CBO XVII LTD., and each of	:
BLUE HERON FUNDING VI LTD., BLUE HERON	:
FUNDING VII LTD., KLEROS PREFERRED	:
FUNDING V PLC, SILVER ELMS CDO PLC and	:
SILVER ELMS CDO II LIMITED, in their own right,	:
	:
Plaintiffs,	:
	:
v.	:
	:
U.S. BANK NATIONAL ASSOCIATION and BANK	:
OF AMERICA, NA,	:
	:
Defendants.	:
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Index No. 14-cv-10116 (KBF)
(Rel. 12-cv-2865-KBF)

ECF CASE

DECLARATION OF JACOB S. KREILKAMP IN SUPPORT OF DEFENDANTS'
JOINT MOTION TO DISMISS

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Attorneys for Defendant Bank of America, N.A.

I, Jacob S. Kreilkamp, hereby declare:

1. I am a partner in the law firm of Munger, Tolles & Olson LLP, counsel of record for Defendant Bank of America, N.A. in the above-captioned matter. I am admitted to practice *pro hac vice* before the Court in this matter. I have personal knowledge of the facts stated in this Declaration, and could and would competently testify to them if called upon to do so. I submit this Declaration in support of Defendants' Joint Motion to Dismiss.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Pooling and Servicing Agreement ("PSA") dated as of July 1, 2006, for the Morgan Stanley Mortgage Loan Trust 2006-9AR, Mortgage Pass-Through Certificates, Series 2006-9AR, among Morgan Stanley Capital I Inc., as Depositor, Wells Fargo Bank, National Association, as Master Servicer and Securities Administrator, and LaSalle Bank National Association, as Trustee and Custodian.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Pooling and Servicing Agreement ("PSA"), with a cut-off date of November 1, 2006, for the WaMu Mortgage Pass-Through Certificates Series 2006-AR17 Trust, among WaMu Asset Acceptance Corp., as Depositor, Washington Mutual Bank, as Servicer, LaSalle Bank National Association, as Trustee, and Christiana Bank & Trust Company, as Delaware Trustee.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the Amended and Restated Indenture ("Indenture") dated as of December 28, 2005, for the \$1,113,750,000 Class A-1 Blue Heron Funding VII Notes, Maturity 2047, \$25,000,000 Class A-2 Blue Heron Funding VII Notes, Maturity 2047, and Euro 88,451,000 Class B Blue Heron Funding VII Notes, Maturity 2047, by and among Blue Heron Funding VII Ltd., as Issuer, Blue Heron Funding VII Inc., as Co-Issuer, Wells Fargo Bank, N.A., as Indenture Trustee, and Wells Fargo Bank, N.A., as Accounts Securities Intermediary, which is attached as Exhibit 1 to the Affirmation of Frederic M. Mauhs in support of defendants' Motion to Dismiss in the action *Justinian Capital SPC v. WestLB AG*, Case No. 600975/2010 (N.Y. Sup. Ct. Dkt. No. 26-1).

5. Attached hereto as **Exhibit 4** is a true and correct copy of Kleros Preferred Funding V PLC's Offering Circular dated March 30, 2007, available at the Luxembourg Stock

Exchange's website,

<https://www.bourse.lu/instrument/listdocuments?cdVal=108833&cdTypeVal=OBL> (last visited Feb. 26, 2015).

6. Attached hereto as **Exhibit 5** is a true and correct copy of Silver Elms CDO II Limited's Prospectus dated June 12, 2007, available at the Irish Stock Exchange's website, http://www.ise.ie/debt_documents/silverelm_6487.pdf?v=2612015 (last visited Feb. 26, 2015).

7. Attached hereto as **Exhibit 6** is a true and correct copy of C-BASS CBO XIV Limited's Offering Circular dated October 21, 2005, available at the Irish Stock Exchange's website, http://www.ise.ie/debt_documents/Prospectus-app%20sub-C-Bass%20CBO%20XIV%20Ltd.-211005_1936.pdf?v=2612015 (last visited Feb. 26, 2015).

8. Attached hereto as **Exhibit 7** is a true and correct copy of C-BASS CBO XVII Limited's Offering Circular dated November 2, 2006, available for download from WestLaw's Company Investigator search engine after searching for "C-BASS CBO XVII Limited" in the "Business Name" field, creating a company report, and expanding the "Financial Advisors" tab and "WESTLB SECURITIES INC" sub-tab (last visited Feb. 26, 2015).

9. Attached hereto as **Exhibit 8** is a true and correct copy of WestLB Group's 2008 Annual Report, available at http://www.portigon.com/cm/content/portigon/i/en/portigon-ag/westlb-archiv/finanzberichte/finanzinformationen--geschaeftsberichte/archiv-geschaeftsberichte/_jcr_content/contentparsys/download_1/file.res/Gbwlb08e.pdf (last visited Feb. 26, 2015).

10. Attached hereto as **Exhibit 9** is a true and correct copy of WestLB AG's March 31, 2008 Interim Report, available at http://www.portigon.com/cm/content/portigon/i/en/portigon-ag/westlb-archiv/finanzberichte/finanzinformationen--zwischenberichte/_jcr_content/marginalparsys/box_0/download_7/file.res/ZwischenberichtQ1-2008e.pdf (last visited Feb. 26, 2015).

11. Attached hereto as **Exhibit 10** is a true and correct copy of WestLB AG's June 30, 2008 Interim Report, available at http://www.portigon.com/cm/content/portigon/i/en/portigon-ag/westlb-archiv/finanzberichte/finanzinformationen--zwischenberichte/_jcr_content/marginalparsys/box_0/download_20/file.res/ZwQ208e.pdf (last visited Feb. 26, 2015).

12. Attached hereto as **Exhibit 11** is a true and correct copy of WestLB AG's June 30, 2008 FSB Report entitled "Effects of the Financial Market Crisis – Additional Reporting on Special Portfolios," available at http://www.portigon.com/cm/content/portigon/i/en/portigon-ag/westlb-archiv/finanzberichte/finanzinformationen--fsb-berichte/_jcr_content/marginalparsys/box/download_4/file.res/FSF_Report_30_June_2008_eng.pdf (last visited Feb. 26, 2015).

13. Attached hereto as **Exhibit 12** is a true and correct copy of WestLB AG's September 30, 2008 Interim Report, available at http://www.portigon.com/cm/content/portigon/i/en/portigon-ag/westlb-archiv/finanzberichte/finanzinformationen--zwischenberichte/_jcr_content/marginalparsys/box_0/download_6/file.res/ZwQ308e.pdf (last visited Feb. 26, 2015).

14. Attached hereto as **Exhibit 13** is a true and correct copy of a series of three emails sent between myself, co-counsel, co-Defendant's counsel, and Plaintiffs' counsel in this matter. The conversation begins on February 6, 2015 and ends on February 11, 2015.

15. Attached hereto as **Exhibit 14** is a true and correct copy of a series of four emails sent between myself, co-counsel, co-Defendant's counsel, and Plaintiffs' counsel in this matter. The conversation begins on February 6, 2015 and ends on February 12, 2015. The three earliest emails are duplicates of the emails contained in Exhibit 13.

16. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the Transcript of Motion Proceedings that took place on January 9, 2014 in the action *Phoenix Light*


SF Ltd. v. Goldman Sachs Grp., Inc., Case No. 652356/2013 (N.Y. Sup. Ct.). The full transcript is attached as Exhibit B-1 to the Affirmation of Nathan R. Lindell in support of plaintiffs' [Proposed] Sur-Reply in Opposition to Defendants' Motion to Dismiss in the action *Phoenix Light SF Ltd. v. Goldman Sachs Grp., Inc.*, Case No. 652356/2013 (N.Y. Sup. Ct. Dkt. No. 93).

17. Attached hereto as **Exhibit 16** is a true and correct copy of Judge Mariana Pfaelzer's "Order Re: Filing of Transaction Documents" dated May 20, 2013 in the matter of *Phoenix Light SF Ltd. v. Bank of America Corp.*, Case Nos. 2:13-CV-3296-MRP (C.D. Cal. Dkt. No. 41); 2:11-ML-2265-MRP (C.D. Cal. Dkt. No. 123).

18. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts of the Complaint filed on May 17, 2013 in the matter of *Phoenix Light SF Ltd. v. Bank of America Corp.*, Case No. 2:13-CV-3296-MRP (C.D. Cal. Dkt. No. 39).

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

Executed on February 27, 2015, at Los Angeles, California.



Jacob S. Kreilkamp